CONVEYANCING TRANSFORMED

END TO END E-CONVEYANCING HAS ARRIVED

JANUARY/FEBRUARY 2017
Conveyancing Transformed
NSW Regional Roadshow

Jan/Feb 2017

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www.finance.nsw.gov.au
Office of the Registrar General

1. Restructure and Privatisation of LPI
2. EC Implementation in NSW
3. The Future of Conveyancing
4. Verification of Identity (VOI) Rules
Conveyancing Transformed - NSW Regional Roadshow

Restructure and Privatisation of LPI
Update - LPI structural changes

Office of the Valuer General

Department of Finance, Services and Innovation

Valuation Services

Spatial Services

Title and Registry Service

Office of Registrar General

Moving to a 35 year private concession

Operational
Regulatory
Update - LPI structural changes

- **Office of the Registrar General (ORG) will:**
  - oversee the operations of LPI - Titling and Registry Services –after sale
  - focus on legislative change and policy administration relating to land registry functions.

- **LPI - Titling and Registry Services**
  - Land Registry operations
  - Private operator for 35 year Concession
  - Currently in final bid stage
EC Implementation in NSW
## EC Implementation in NSW

<table>
<thead>
<tr>
<th>e Dealing Lodgment Statistics to 20 Jan 2017</th>
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<tbody>
<tr>
<td><strong>Total Release 1 Lodgements (DMs &amp; Ms)</strong></td>
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<tr>
<td><strong>R2 Dlg Type Totals:</strong></td>
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<tr>
<td>DM:</td>
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<tr>
<td>T:</td>
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<tr>
<td>M:</td>
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<tr>
<td>WX:</td>
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<td>X:</td>
</tr>
<tr>
<td><strong>Total Release 2:</strong></td>
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<tr>
<td>PN:</td>
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<tr>
<td><strong>Total e Lodgments</strong></td>
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## EC Implementation in NSW

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL SOLICITORS (NSW)</td>
<td>985</td>
</tr>
<tr>
<td>TOTAL CONVEYANCERS (NSW)</td>
<td>357</td>
</tr>
<tr>
<td>TOTAL SOLICITORS (VIC)</td>
<td>115</td>
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<td>TOTAL CONVEYANCERS (VIC)</td>
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<tr>
<td>TOTAL SOLICITORS (QLD)</td>
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<tr>
<td>TOTAL SOLICITORS (ACT)</td>
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<td>TOTAL SOLICITORS (WA)</td>
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<td>TOTAL CONVEYANCERS (SA)</td>
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<td>TOTAL SOLICITORS (SA)</td>
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<td>TOTAL FIs</td>
<td>59</td>
</tr>
<tr>
<td>TOTAL SUBSCRIBERS IN NSW</td>
<td>1597</td>
</tr>
</tbody>
</table>
Electronic Caveats

Advantages of e Caveats

• Lodged electronically 7 days pw
• Often time critical
• Fastest way to the Register
• Caveats are effective at Lodgment
• For Caveats and any dealing - Proof read before lodging
The Future of Conveyancing
The future of Conveyancing

Conveyancing is undergoing “Digital Disruption”

“Digital disruption refers to changes enabled by digital technologies that occur at a pace and magnitude that disrupt established ways of value creation, social interactions, doing business and more generally our thinking.”

As a result Conveyancing is changing rapidly

Some Drivers for change:

• Electronic Conveyancing- PEXA

• National Consistency

• Changes out side “Conveyancing” – Digital Govt; online property marketing; increased accessibility of information
The future of Conveyancing

Other changes that will impact conveyancing:

• Uniform National Mortgage (May 2017) - other national Forms?
• Standard Discharge Authority (PEXA based) ??
• Electronic contracts and Electronic Vendor Disclosure
• Fed Govt issues
  ➢ Foreign Ownership register - third party reporting provisions
  ➢ Foreign Resident Withholding Tax
• Electronic communications with client (PEXA SettleMe)
• Growth of online property marketing
• LPI Privatisation
Conveyancing Rules

Real Property Act

• Section 12E - The Registrar General may make Conveyancing rules covering, for example:
  ➢ verification of identity and authority,
  ➢ client authorisations,
  ➢ the retention of documents and evidence
  ➢ classes of documents that must be lodged electronically
  ➢ Alternative arrangements for execution and attestation

• The Registrar-General may refuse to accept or register, or may reject, a conveyancing transaction that does not comply with the requirements of the conveyancing rules [s.12E (9)]
Commenced 1 May 2016, transition period of 3 months before full compliance was required on 1 August 2016.

Introduced:

• Verification of Identity (VOI) requirements for practitioners
  – Reasonable steps
  – Identity Agents (IDSecure; ZipID; AustPost)
  – VOI Standard (Sch 8 Participation Rules)
• Verification of Authority (right to deal)
• Retention of evidence
• Based on E-Conveyancing and ARNECC Guidance notes apply See: www.arnecc.gov.au
What’s Next?

4 July 2016 - Dominic Perrottet, Minister for Finance, Services & Property said:

“Across Australia, the future of conveyancing is digital. The benefits are clear, the technology is here, and this is our plan for NSW to lead the way. We are committed to working with all stakeholders to make sure they have the technical capacity, training and resources they need to adapt as conveyancing goes digital.”

Stage 1

- Priority Notices – introduced as electronic only – 28 Nov 2016
- Stage 1 – will affect financial institutions (ADIs) in 2017 and will parallel measures in Vic and WA
  - Stand alone Mortgages and Discharges by ADIs
  - Refinance transactions
  - Extension of eCT issue
- Implemented in Conveyancing Rules V2 - published on the LPI website.
Conveyancing Rules Version 2

Commenced on 26 November 2016

• Clarifies some existing provisions
• Priority Notices must be lodged electronically. [R 8.1]

From 1 March 2017

• Mortgagees (or their Rep) must lodge stand alone discharges of mortgage [R 7.2]
• ADIs must lodge electronically all stand alone
  ➢ discharges of mortgage; and
  ➢ mortgages to which the National Credit Code applies; [R 8.2]

From 1 August 2017

• ADIs must lodge Refinances electronically [R 8.4]
eCT Requirements

From 1 March 2017

• ADIs will receive an eCT on registration of an electronic mortgage (where they are 1st Mortgagee) [R 9.1]

From 1 August 2017

• ADIs will receive an eCT on registration of paper transactions (where they remain 1st Mortgagee)
NSW to Transition to e-Conveyancing by mid 2019

Stage 2 - A paperless conveyancing future in NSW

Conveyancing Reform Committee

• The Registrar General consulting with stakeholders to develop a pathway to phase out paper-based conveyancing in NSW by mid 2019.

• Stage 2 details to be announced shortly
  - All core conveyancing transactions to be electronic
  - Timelines to be confirmed by Minister shortly
  - Paper CTs to be removed completely

• Committee will continue to meet to advise on implementation
What to expect in the future

• Stage 2 of the eConveyancing Transition program
  • All mainstream Conveyancing to be lodged electronically by mid 2019
  • Additional Interim milestones to be announced
• Client Authorisations for paper
• Electronic acceptance of mortgages
• No paper CT by mid 2019
A paperless conveyancing future in NSW -

Current eConveyancing Scope

• documents to be lodged electronically

  ➢ Discharge of Mortgage
  ➢ Mortgage
  ➢ Transfer
  ➢ Caveat and Withdrawal of Caveat
  ➢ Priority Notice, Extension of Priority Notice and Withdrawal of Priority Notice,
  ➢ CoRD Consents
A paperless conveyancing future in NSW

Residual Document Strategy

- Enabling all documents to be lodged electronically
- By mid 2019
  - Change of Name,
  - Notice of Death,
  - Transmission Application,
  - Lease,
  - Transfer by Mortgagee,
  - Transfer of Lease/Mortgage
Subscriber Compliance Program

Section 33- Electronic Conveyancing National Law (NSW)

• MODEL PARTICIPATION RULES GUIDANCE NOTE 6
  

• Subscriber Compliance Program is to assist Subscribers in meeting their obligations and responsibilities under the Participation Rules and to build trust and confidence in the electronic lodgement network. Priority Notices must be lodged electronically.

• Post Registration check
Verification of Identity (VOI) Rules
Verification of Identity (VOI) Rules

• Due diligence requirement to know client

• Formal VOI requirements currently apply for:
  – mortgagees to identify the mortgagor – s 56C Real Property (RP) Act
  – attesting witnesses – s 117 RP Act
  – electronic transactions - Rule 6.5 NSW Participation Rules
  – All conveyancing professionals – Part 4 NSW Conveyancing Rules (V2) from 1 August 2016
Verification of Identity (VOI) Rules

• Significant fraud mitigation and consumer protection measure
• Apply to solicitors and conveyancers
• Formal (standardised) Verification of Identity (VOI) requirements for all conveyancing transactions
• Consistent national requirements
• Paper and electronic conveyancing
VOI - What is required?

You must take reasonable steps to verify the identity of your client [R 4.1.2]:

• either by:
  – applying the VOI Standard (deemed to be reasonable steps)
  – or in some other way that constitutes reasonable steps [R 4.1.4]

and

• ensure the client is a legal person and has the right to enter into the transaction [R4.3.2]

• Note: Further steps may be required – not just ticking the box
R 4.1.5 - When are further checks required?

Where you know or ought reasonably to know that:

• any identity Document produced by the Person Being Identified is not genuine; or

• any photograph on an identity Document is not a reasonable likeness of the Person Being Identified

• the Person Being Identified and/or the Identity Declarant does not appear to be the Person to which the identity Document(s) relate;

• it would otherwise be reasonable to do so.
The VOI Standard - SCHEDULE 8 – NSW Participation Rules

• Requires **face-to-face - in-person** interview

• Hierarchy of ID documents, highest possible category must be used

• Documents must be current (except Passport < 2 years old)

• Where Documents contain photographs the Identity Verifier must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs
What if you can’t meet the VOI Standard

Take Reasonable steps

- You have to judge what is reasonable in the particular circumstances

- If your client doesn’t have full documents consider Category 5 an Identifier declaration - essentially a referee

- Do what you are able to do – if you have done all you can and you are satisfied, in the circumstances, you are likely acting reasonably.
VOI - Conveyancing Rules

Options for conducting VOI:

• Do it yourself
• Do it yourself Using Software solution
• Use an Identity Agent
  – ZipID
  – IDSecure
  – Australia Post
Identity Agents and identity software

**Australia Post**

**IDSecure Pty Ltd**

**ZipID Pty Ltd**

Identity Software provider

**Infotrack**
ARNECC has so far published 6 Guidance Notes:

- **MPR Guidance Note #1 – Client Authorisations**
- **MPR Guidance Note #2 – Verification of Identity**
- **MPR Guidance Note #3 – Certifications**
- **MPR Guidance Note #4 – Right to Deal**
- **MPR Guidance Note #5 – Retention of Evidence**
- **MPR Guidance Note #6 – Compliance Examinations**
“We have to recognise that the disruption that we see driven by technology, the volatility in change is our friend if we are agile and smart enough to take advantage of it.”

Malcom Turnbull

- The digital revolution is here and is ongoing
- It will change conveyancing in the ways we have discussed and ways we have not yet foreseen
- The challenge for every one in every sector of the property market is to find the opportunities and benefit from them